

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

Juan B. McGowan

Enforcement Case No. 11-11267

System ID No. 0196233

Respondent.

_____ /

Issued and entered
on August 12, 2011
by Annette E. Flood
Chief Deputy Commissioner

CONSENT ORDER AND STIPULATION

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times pertinent to the matters herein, Juan B. McGowan (Respondent) was a licensed resident producer in the State of Michigan.
2. Respondent knew, or had reason to know Section 1207 of the Michigan Insurance Code, MCL 500.1207, states in part:

(1) An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
3. Respondent knew, or had reason to know Section 1239 of the Michigan Insurance Code, MCL 500.1239 states in part:

In addition to any other powers under this act, the commissioner may place on probation, suspend, or revoke an insurance producer's license or may levy a civil fine under section 1244 or any combination of actions, and the commissioner shall refuse to

issue a license under section 1205 or 1206a, for any 1 or more of the following causes:

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

4. On December 12, 2008, Respondent received three checks for \$243.00, \$786.79 and \$193.00 to be applied respectively towards renters insurance, automobile insurance and landlord tenants fire insurance policies. Respondent deposited said checks.
5. As stated by Respondent in a December 9, 2009 letter, "coverage was never bound for the landlord tenant fire policy due to the shortage of funds to cover the initial down payment and the property inspection."
6. Respondent failed to refund the \$193.00.
7. By retaining the \$193.00 payment which was not used to obtain a landlord tenant fire policy, Respondent violated Section 1207 and 1239(1)(d) of the Code.

II. ORDER

Based upon the parties stipulation to the Findings of Fact and Conclusions of Law above, the Commissioner **ORDERS** the following:

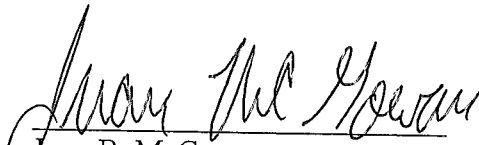
- A. Respondent shall refund \$193.00 to his client and provide proof of the issuance of the refund acceptable to the Commissioner.
- B. Respondent shall pay to the State of Michigan, through OFIR, a civil fine of \$500.00 within 30 days of the invoice date as indicated on the OFIR invoice.

OFFICE OF FINANCIAL AND
INSURANCE REGULATION


Annette E. Flood
Chief Deputy Commissioner

III. STIPULATION

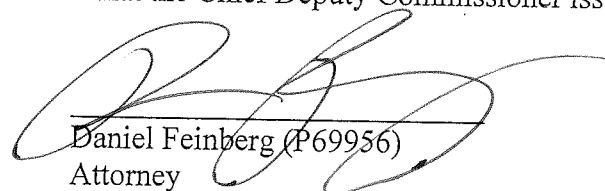
Respondent has read and understands the Consent Order above. Respondent agrees that the Chief Deputy Commissioner has jurisdiction and authority to issue this Consent Order pursuant to the Code and that both parties have complied with the all procedural requirements of the APA and the Code. Respondent waives the right to a hearing in this matter if this Consent Order is issued. Respondent understands that this stipulation and Consent Order will be presented to the Chief Deputy Commissioner for approval and the Chief Deputy Commissioner may or may not issue this Consent Order. Respondent waives all objections to the Commissioner deciding this case following a hearing in the event the Consent Order is not approved. Respondent admits the facts set forth in the above Consent Order and agrees to the entry of this order.



Juan B. McGowan
System ID No. 0196233

Date

OFIR staff approves this stipulation and recommends that the Chief Deputy Commissioner issue the above Consent Order.



Daniel Feinberg (P69956)
Attorney

Aug. 2, 2011

Date

